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March 20, 2014

Police Chief Frank McCoy
Oceanside Police Department
3855 Mission Avenue
Oceanside, CA 92054

Re: Non-fatal shooting of Mr. Gregory Dale Foley on September 1, 2013, by Oceanside Police Officer Corey Kaldenbach; OPD Case No. 13-011784; DA Special Operations Case No. 13-113PS; Deputy District Attorney assigned: Assistant Chief Fiona Khalil

Dear Chief McCoy:

We have reviewed the reports and other materials compiled by your Criminal Investigation Division concerning the shooting of Mr. Gregory Foley on September 1, 2013, by Officer Corey Kaldenbach. A District Attorney Investigator responded to the scene and was briefed by your investigators. The case materials were presented to the District Attorney's Office for review on October 15, 2013.

Synopsis

Oceanside Police officers responded to a 9-1-1 call from a residence. The residents were an elderly couple, Beverly and Milford Foley, and their adult son Gregory Foley. Beverly called 9-1-1 to report she had been attacked by her son. Officers found Beverly badly injured and bleeding from multiple wounds. Beverly told officers Milford was inside alone with Gregory. Officers tried to speak with Gregory through the door but he was uncooperative. Fearing that Milford was in danger, officers entered the residence where they were confronted by Gregory who was armed with a knife. Gregory refused to comply with demands to drop the knife and was shot by Officer Kaldenbach. He survived his injury.

Persons Involved

Mr. Gregory Foley was a 56-year-old resident of Oceanside at the time of the shooting.

OPD Officer Corey Kaldenbach had been a police officer for six years and was a member of the SWAT team at the time of the shooting.

Shooting

Milford and Beverly Foley are in their 80's. Oceanside police officers responded to a family disturbance on Milano Way involving the Foleys, and their adult son Gregory Foley. Officers spoke with the occupants. An hour later Beverly called 9-1-1 to report she had been attacked by her son.

The officers found Beverly injured in the open garage and called for additional officers to assist. Seven additional officers responded including a supervisor, K-9 Unit and officers armed with less lethal force options. Officers could see a bloody scene inside the residence and did not get any response from Milford Foley when they yelled out to him. Fearing Milford Foley was injured, officers formed a tactical entry team of seven officers entered the residence.

Once inside the home Gregory Foley confronted the officers with a kitchen knife as the officers made their way up the stairs to the second floor. Officers gave Gregory Foley verbal commands to drop the knife but he did not comply. Officers fired at Gregory with 40mm "sponge" rounds (a form of less lethal force consisting of rubber and plastic) but they had no effect on him. After being struck with the sponge rounds, Foley walked towards a bedroom still holding the knife. Officers had not yet been able to locate Milford Foley. Officer Kaldenbach fired one round at Foley with his M4 Carbine. The round struck a wall near the stairs before hitting Foley in the left shoulder. Foley continued into the bedroom with officers following. Inside the bedroom Foley was hit again with sponge rounds and a K-9 was deployed. The dog bit Foley allowing officers to take him into custody without additional shots being fired although Foley continued to physically resist. Milford Foley was found locked in the upstairs bathroom uninjured.

Investigation

The crime scene was secured and an investigation was conducted. Milford Foley suffers from dementia and is cared for by Beverly. There have been ongoing family disturbances involving Milford, Beverly and Gregory Foley. OPD officers were familiar with the family and had responded to calls for service in the past involving arguments between the Milford Foley and Gregory Foley.

All reports, diagrams, recorded witness interviews, OPD radio transmissions including the 9-1-1 call were reviewed. On the recorded 9-1-1 call made by Beverly, Gregory can be heard in the background continuing to threaten her and saying, "You're dead."

The knife carried by Gregory was a plastic handled steak knife with a 5" blade. It was found in the bedroom where he was taken into custody by officers. Officer Kaldenbach fired one .223 round from his M4 Carbine. The cartridge casing was found on the stairs in a location consistent with Kaldenbach's stated firing location as well as other officers' accounts of the shooting.

Officer Kaldenbach's Statement

Officer Kaldenbach was dispatched to the call of an assault with a deadly weapon. The police dispatcher broadcast that the subject was armed with a knife and could be heard in the background saying, "you're going to die." As he approached the home, Kaldenbach saw a police lieutenant walking with Beverly Foley who was covered in blood. Kaldenbach told investigators he was part of the entry team that entered the house. He described seeing the telephone off the hook and large amounts of blood throughout the house. Kaldenbach removed the family dog from the residence and went back inside.

Gregory Foley was on the stairs and the officers were not in position to deploy a Taser effectively and the sponge rounds had no effect. Kaldenbach recalls hearing another officer yell, "He's got a knife." Gregory would move toward and then away from the officers with the knife and eventually reached the second floor. As Gregory made his way to the bedroom, Kaldenbach called out to him, "Stop, come back, stop!" The bedroom was a concern to Kaldenbach who explained, "...I felt as though he was going to go hurt his father the same way he did his mother, fearing that he was going to hurt somebody or possibly kill them, I took a shot at him..."

Injuries

Beverly Foley's injuries consisted of multiple stab wounds to the scalp, face and extremities as well as facial fractures. She was treated at Scripps La Jolla.

Gregory Foley suffered a through and through gunshot wound to the left shoulder and multiple lacerations from the dog bite. He was treated at Scripps La Jolla.

Charges

Gregory Foley was charged with the attempted murder of Beverly Foley, two counts of elder abuse, false imprisonment of an elder and felony resisting arrest. His case is currently set for trial on April 29, 2014.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent review of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of Scott v. Henrich (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense,

uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”” [Citations omitted.]

Conclusions

Officer Corey Kaldenbach responded to a family disturbance where 81 year old Beverly Foley was found with stab wounds and major injuries as a result of an attack by Gregory Foley. Attempts to call out to 86-year-old Milford Foley went unanswered and Gregory Foley refused to come out of the home. Officers were in a situation where they reasonably believed Milford was inside severely injured or in imminent danger.

Once inside the residence, officers found Gregory Foley armed with a knife. He failed to comply with verbal commands and less lethal force was used unsuccessfully. Officers had not yet located Milford Foley and did not know if he was safe when Officer Kaldenbach fired on Gregory in an attempt to stop him from potentially inflicting harm on his father. Gregory Foley’s behavior created a situation where Officer Kaldenbach and other officers reasonably feared for Milford Foley’s safety as well as their own. Kaldenbach’s use of deadly force under these circumstances is therefore reasonable and he bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney
County of San Diego

By:


PAUL AZEVEDO
Deputy District Attorney
Chief, Special Operations Division

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